

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Vaidyanathan

Serial No.: 10/738,403

Filed: December 17, 2003

Group Art Unit: 2624

Examiner: Lee, John W.

Title: CAD MODELING SYSTEM AND METHOD

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR PRE-APPEAL BRIEF REVIEW**

**ARGUMENT**

This Pre-Appeal Brief Review is requested because the proposed combination is improper as the combination as argued by the Examiner would destroy an intended operation of the base reference. Even in view of recent case law as noted by the Examiner a proposed combination cannot be proper if the references teach away from the combination, and certainly cannot be proper if such a combination would destroy operation of the base reference. .

Claims 1-3, 5, 7-9 and 12-14 were rejected as being obvious over the Shashua (U.S. 5,821,943) as modified in view of the IEEE paper authored by Park.

The Examiner argues that a reason was provided as to why a person of ordinary skill would make the proposed combination and then goes on to quote recent case law. However, a proposed combination cannot be supported and is not proper if the combination would destroy an intended

operation of the base reference, or if the references themselves teach away from the combination proposed by the Examiner. In this instance, the proposed combination would destroy an intended operation of the base reference, in this case Shashua.

The Park references specifically states that more than one camera for obtaining 2D images is not desirable. (Page 66, 2<sup>nd</sup> paragraph from bottom in Column 2). Therefore, the Examiner is attempting to combine a system that requires and utilizes many 2D images to compile a 3D image (Shashua) with a system that uses only one 2D image, and that specifically states that more than one 2D camera or image reduces system performance without benefit. The entire reason for using the scanned light as disclosed in the Park reference is to obtain 3D images with only one 2D image. In contrast, the Shashua device utilizes many 2D images to formulate the desired 3D image. For these reasons, the two references teach away from the proposed combination.

Further, the proposed combination would require such a change in operation of the base reference (Shashua) as to destroy its intended operation. As appreciated, a proposed combination cannot destroy an intended operation of the base reference. In this case, the purpose of Shashua is to generate a novel view of a 3D scene. The novel view is not one that is provided by any of the 2D images. (Col 1, lines 25-65, and Col 3, lines 10-20). The use of the scanning disclosed in the Park reference is utilized to eliminate the need for more than one camera and view to reduce the accumulation of errors and other problems encountered with the use of multiple cameras and images (Park, page 65, last paragraph, and page 66 first full paragraph). The entire disclosure of the Shashua reference provides a process of combining many 2D images from different cameras for creating a 3D image from many 2D images, where the entire disclosure of the Park references is focused on using only one camera. If the scanning system disclosed in the Park system was

somewhat combined with the Shashua device, the Shashua device would no longer operate as intended and would become inoperable for its intended purpose. As appreciated, a proposed combination cannot render the base reference inoperable for its intended use.

Accordingly, simply because both Park and Shashua disclose a method of generating a 3D image from a 2D images does not mean that they are therefore combinable. As discussed above, the methods and processes are very different.

The rejections to the remaining claims all depend on the combination of Shashua and Park. For the reasons discussed above, this combination is not proper and Applicant requests reconsideration and withdrawal of the rejection to the claims.

For these reasons Applicant requests reconsideration and withdrawal of the rejection to the claims.

Respectfully submitted,  
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